

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

CIVIL NO. 1:09CV3

|                                 |   |                  |
|---------------------------------|---|------------------|
| GALVATUBING, INC.,              | ) |                  |
|                                 | ) |                  |
| Plaintiff,                      | ) |                  |
|                                 | ) |                  |
| Vs.                             | ) | <u>O R D E R</u> |
|                                 | ) |                  |
| COMMONWEALTH ALUMINUM TUBE )    |   |                  |
| ENTERPRISES, LLC; ALERIS )      |   |                  |
| INTERNATIONAL, INC.; KINGS )    |   |                  |
| MOUNTAIN ASSOCIATES, LLC; and ) |   |                  |
| JOHNSON DEVELOPMENT )           |   |                  |
| ASSOCIATES, INC.,               | ) |                  |
|                                 | ) |                  |
| Defendants.                     | ) |                  |
|                                 | ) |                  |

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THIS MATTER is before the Court on the Magistrate Judge's Memorandum and Recommendation, filed March 11, 2009.  
  
Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On March 11, 2009, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding the motions of Defendants Johnson Development Associates and Kings Mountain Associates, LLC, to dismiss. The Magistrate Judge also recommended that the Plaintiff's notice of voluntary dismissal, which disposed of some but not all of its claims, be stricken as "improperly filed." **Memorandum and Recommendation, at 17.** The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 10 days of service of the Recommendation; the period within which to file objections expired on March 30, 2009. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendations that the motions to dismiss be allowed and the Plaintiff's notice of voluntary dismissal be stricken.

**IT IS, THEREFORE, ORDERED** that the motions of Defendants Johnson Development Associates and Kings Mountain Associates, LLC, to dismiss are **ALLOWED**, and all of Plaintiff's claims against these Defendants are hereby **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that the Plaintiff's notice of voluntary dismissal filed February 27, 2009, is hereby **STRICKEN** as improvidently filed.

**IT IS FURTHER ORDERED** that this matter is hereby **STAYED** as to the remaining Defendants Commonwealth Aluminum Tube Enterprises, LLC, and Aleris International, Inc., pending completion of bankruptcy proceedings in the United States Bankruptcy Court for the District of Delaware.

The Clerk of Court is directed to remove this action as a statistically pending matter as outlined in Volume XI, Chapter V of the *Guide to Judiciary Policies and Procedures*.

Signed: April 7, 2009



Lacy H. Thornburg  
United States District Judge

